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CHARLES ELMORE

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1928.

Nos. [redacted] and [redacted]
26

THE FARMERS LOAN and TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

*Appellant,*

vs.

STATE OF MINNESOTA,

*Appellee.*

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## STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1928.

Nos. 632 and 633.

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THE FARMERS LOAN and TRUST COMPANY, as sole surviving executor of the last will and testament of HENRY R. TAYLOR, deceased,

*Appellant,*

vs.

STATE OF MINNESOTA,

*Appellee.*

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## STATEMENT SHOWING BASIS OF JURISDICTION AS REQUIRED BY RULE 12.

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*To The Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:*

Appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

These two appeals are in the same case and present the same questions for review. In the cause docketed as No. 632 an appeal was taken from a judgment of the Supreme Court of Minnesota entered October 13, 1928, which reversed in part an order or judgment of the District Court for Ramsey County, Minnesota. After the entry of said judgment of October 13, 1928, the remittitur went down to said District Court, which entered a new order or judgment in conformity with the decision of the Minnesota Supreme Court and an appeal was thereupon duly taken by appellant herein to the Minnesota Supreme Court from this new order or judgment. On December 19, 1928, the Supreme Court of Minnesota entered its judgment affirming the second order or judgment of said District Court, and the cause docketed as No. 633 is an appeal from the judgment of December 19, 1928. Appellant being in some doubt as to which of the two said judgments of the Minnesota Supreme Court is the final judgment (though appellant believes the judgment of December 19, 1928, to be such), and out of caution, has appealed from each of these judgments.

## (a) STATUTORY PROVISION SUSTAINING THE JURISDICTION OF THIS COURT.

These appeals are taken under Sections 861a and 861b of Title 28 of the United States Code, as amended April 26, 1928, and under Rule 46 of the Rules of this Court effective July 1, 1928. Under the old practice writs of error would have been issued under Section 237 of the Judicial Code as amended, being Section 344, Title 28 of the United States Code.

## (b) DATES OF JUDGMENTS SOUGHT TO BE REVIEWED AND ON WHICH APPLICATIONS FOR APPEALS WERE PRESENTED.

In Cause No. 632 the judgment of the Minnesota Supreme Court was entered on October 13, 1928, (No. 632, R. page 92)* and the application for appeal therefrom was presented, the order allowing the appeal entered, and the citation issued and served on December 19, 1928, (No. 632, R. pages 93, 97 and 101).

In cause No. 633 the judgment of the Minnesota Supreme Court was entered on December 19, 1928, (No. 633, R. page 102) and the application for appeal therefrom was presented, the order allowing the appeal entered, and the citation issued and served on December 19, 1928, (No. 633, R. pages 103, 107 and 111).

## (c) NATURE OF CASE AND RULINGS OF THE MINNESOTA SUPREME COURT.

Appellant is the sole surviving executor of the last will and testament of Henry R. Taylor, who died a resident of New York on December 4, 1925. At the date of his death and for a long time prior thereto, Mr. Taylor owned, held and kept in New York certain bonds of the State of Minnesota and of the cities of St. Paul and Minneapolis, Minnesota, and certain certificates of indebtedness of the State of Minnesota. A part of these securities were registered in the name of the owner, the remaining were payable to bearer (both records, page 13 et seq.) The question presented by these appeals is whether

*Note: The records, which it is stipulated may be combined in one printed record, have not yet been printed. All references herein to the records are therefore to the pages of the original records as prepared by the Clerk of the Minnesota Supreme Court.

Minnesota can, without violating the Constitution of the United States, particularly the provisions of Section 1 of the Fourteenth Amendment thereto and Section 10 of Article I thereof, impose an inheritance tax upon the transfer of these securities by devolution at Mr. Taylor's death.

The provisions for the imposition and the determination of inheritance taxes in Minnesota are found in Sections 2292 to 2321 of the General Statutes of Minnesota for 1923. Section 2292 provides that "a tax shall be and is hereby imposed upon the transfer of property, real, personal or mixed, or any interest therein, * * * when a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a nonresident of the state at the time of his death." Section 2293 specifies the amount of such taxes. Section 2297 provides that "Every tax imposed by this act shall be a lien upon the property embraced in any inheritance, devise, bequest, legacy or gift until paid, and the person to whom such property is transferred and the administrators, executors and trustees of every estate embracing such property shall be personally liable for such tax, until its payment to the extent of the value of such property." Section 2302 specifies the method of determining the inheritance tax in the case of a nonresident who dies owning personal property in Minnesota. It is there provided as follows:

> "If any nonresident of this state dies owning personal property in this state, such property may be transferred or assigned by the personal representative of, or trustee for the decedent, only after such representative or trustee shall have procured a certificate from the attorney general consenting to the transfer of such property. Such consent shall be issued by the attorney general only in case there is no tax due hereunder; or in case there is a tax, when the same shall have been paid."

It is further provided that any personal representative of a nonresident decedent desiring to transfer property having its situs in Minnesota may make application to the Attorney General for the determination of whether there is any tax due to the state on account of the transfer of the decedent's property and that such applicant shall furnish the Attorney General with certain information. It is then provided:

> "From the information so furnished to him and such other information as he may have with reference thereto, the attorney general shall, with reasonable expedition, determine the amount of tax, if any, due to the state under the provisions of this act and notify the person making the application of the amount thereof claimed to be due. On payment of the tax as determined to be due or in case there be no tax due to the state, the attorney general shall issue a consent to the transfer of the property as owned by the decedent."

It is further provided that any person feeling aggrieved by the determination of the Attorney General may appeal to the District Court of Hennepin County or Ramsey County, Minnesota, "by filing with the Attorney General a notice in writing setting forth his objections to such determination and that he appeals therefrom" and thereupon the court to which the appeal is taken acquires jurisdiction of the proceeding. Upon hearing "the said court may determine any and all questions of law and fact necessary to the enforcement of the provisions of this act according to its intent and purpose, and may by order direct the correction, annulment or modification of any determination made by the attorney general." Finally it is provided as follows:

> "The attorney general and any person aggrieved by the order of the district court may appeal to the supreme court from any such order made by said court, within

the time and in the manner now provided by law for the taking of appeals from orders in civil actions."

The Minnesota statutes prescribe no other procedure than the above for determining the inheritance taxes due in the case of the transfer by will of personal property owned by a nonresident. It is manifest that when all the steps above mentioned shall have been taken and a judgment of the Supreme Court of Minnesota entered, that judgment is a final judgment. It judicially establishes the lien upon the property and fixes with finality the rights and obligations of the parties.

In the present case the executors of Mr. Taylor's will made application to the Attorney General of Minnesota for a determination of the inheritance tax due that state (both records, pages 1-7). The Attorney General found and determined a tax to be due upon the transfer of the securities here involved (both records, pages 8-11). Thereupon the executors appealed to the District Court of Ramsey County, stating as grounds for their appeal that the findings and determination of the Attorney General violated Section 1 of the Fourteenth Amendment to and Section 10 of Article I of the Constitution of the United States (both records, pages 12-14). The appeal was heard upon a stipulation of facts (both records, pages 15-61). The District Court found that the findings and determination of the Attorney General and the action of the State of Minnesota in attempting to impose an inheritance tax upon the transfer of the securities here involved were in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States and ordered that the findings and determination be corrected, amended and modified in this respect (both records, pages 64-67). From the order or judgment of the District Court the State of Minnesota appealed to the Min-

nesota Supreme Court (both records, page 78). After argument the Minnesota Supreme Court affirmed the order of the District Court upon the following ground (219 N. W. 153, 154): "If we construe the law imposing the inheritance tax as operative upon or applicable to the property here involved, we are of the opinion that it would be in violation of the Fourteenth Amendment to the United States Constitution" (both records, pages 82-86). Within a few days after the rendition of this opinion the United States Supreme Court rendered its decision in the case of *Blodgett v. Silberman*, 48 Sup. Ct. Rep. 410. The Attorney General thereupon petitioned for a reargument (both records, pages 87-88), which petition was granted (both records, page 89). After reargument the Minnesota Supreme Court reversed the order of the District Court in so far as that order determined that no inheritance tax could be imposed upon the transfer of the securities here in question, feeling constrained to do so because the United States Supreme Court had held in the *Silberman case* that the United States bonds and treasury certificates there involved were so far intangible property that their transfer by devolution could be taxed by the state of the domicile of their owner, though the securities themselves were held in another state. The Minnesota Supreme Court said (221 N. W. 64, 65):

> "It is our aim to follow the decisions of the Supreme Court of the United States, since we are construing a provision of the Federal Constitution, although our own state constitution contains a similar provision. The opinion in the Silberman case is not necessarily inconsistent with the result we reached in this case because the domicile of the decedent may be a controlling element. But, in view of our previous holdings, it seems that we must logically reach an opposite conclusion from the fact that these securities are intangibles and not tangibles" (both records, pages 90-91).

Accordingly a judgment of reversal was entered by the Minnesota Supreme Court on October 13, 1928, from which an appeal was taken to this Court on December 19, 1928, as above stated.

After the entry of the judgment of October 13, 1928, the remittitur of the Minnesota Supreme Court went down to the District Court and that Court entered a new order or judgment in conformity with the decision of the State Supreme Court (No. 633, R. pages 93-94). The surviving executor appealed to the Minnesota Supreme Court from this second order or judgment of the District Court (No. 633, R. pages 95-96) and assigned as error that the District Court failed to hold that the findings and determination of the Attorney General, and the law under which they were made as construed by said Court, are invalid and in violation of Section 1 of the Fourteenth Amendment to the United States Constitution and of Section 10, Article I of said Constitution (No. 633, R. pages 97-100). Thereupon the State Supreme Court rendered its opinion affirming the order or judgment of the District Court, saying (222 N. W. 528):

> "The questions presented are those decided by this Court on a former appeal as reported in 175 Minn. 310, 219 N. W. 153, on reargument, 221 N. W. 64. Our previous conclusion was based upon the Constitution of the United States and our conception of its construction by the United States Supreme Court. We did not there base our decision upon our own fundamental law but upon the Federal authority, and upon authority of our previous conclusion and the Federal Constitution the said final order or judgment from which this appeal is taken is affirmed" (No. 633, R. page 101).

Upon this decision the Minnesota Supreme Court entered its judgment of affirmance on December 19, 1928, and on the

same date an appeal was taken from that judgment to this Court (No. 633, R. 102).

Thus the Federal questions presented by the assignments of error in the two appeals now before this Court, namely, whether the inheritance tax law of Minnesota, in so far as the same is construed to apply to and impose an inheritance tax upon the transfer of the securities here in question, and the authority exercised under said law, are invalid and deprive appellant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States and impair the obligation of contracts in violation of Section 10 of Article I of said Constitution, were raised at the commencement of this proceeding, were presented upon appeal and were passed upon by the Supreme Court of Minnesota. The decisions of the Minnesota Supreme Court filed September 28, 1928 (both records, pages 90-91) and December 14, 1928 (No. 633, R. page 101), and the judgments entered thereon were in favor of the validity of the inheritance tax statute of Minnesota as so construed and applied by said Court and denied the claims of appellant that said statute was repugnant to the Constitution of the United States in the respects above mentioned.

(d) CASES SUSTAINING THE JURISDICTION.

*Blackstone v. Miller*, 188 U. S. 189;
*Buck v. Beach*, 206 U. S. 392;
*Frick v. Pennsylvania*, 268 U. S. 473;
*Rhode Island Trust Company v. Doughton*, 270 U. S. 69.

In each of these cases this Court has assumed jurisdiction on a writ of error to the state court under the former procedure, to determine whether a state inheritance tax law as con-

strued and applied by the highest court of the state is valid under the Constitution of the United States, and particularly the Fourteenth amendment thereto. These cases are therefore authorities sustaining the jurisdiction of this Court in the present case.

This Court, so far as we can ascertain, has never passed upon the questions now presented. The case of *Blodgett v. Silberman,* 48 Sup. Ct. Rep. 410, dealt with the power of the state of the domicile of a decedent to impose a tax upon the transfer by will of United States bonds and treasury certificates and bank notes owned by the decedent but kept in another state. Our case presents the question of the power of a state to impose a tax upon the transfer by will of its own bonds and those of its municipalities when the bonds themselves are outside the state and their owner is a nonresident at the date of his death. This question was expressly left open in the *Silberman* decision.

Respectfully submitted,

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